

NO. 5:15-HC-2070-FL

Respondent.

ORDER

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31, 2011). Petitioner appealed the dismissal of his § 2255 motion, and the Fourth Circuit dismissed petitioner's appeal on April 30, 2012. United States v. Hope, 472 F. App'x 195 (4th Cir. 2012).

On April 14, 2015, petitioner filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, alleging that his prior convictions for manslaughter and breaking and entering do not qualify as predicate offenses for the purposes of 18 U.S.C. § 924(e)'s Armed Career Criminal Act. On July 20, 2015, petitioner moved to amend his § 2241 petition to include his claim that the Fourth Circuit's decision in United States v. Newbold, 791 F.3d 455 (4th Cir. 2015), renders his conviction for possession with the intent to sell and deliver no longer a § 924(e) predicate offense. Respondent filed a response to petitioner's motion to amend on December 22, 2015.

DISCUSSION

Respondent, in his December 22, 2015, filing, acknowledges that petitioner's claim pursuant to Newbold has merit, and that petitioner no longer qualifies as an armed career criminal pursuant to § 924(e). Because respondent concedes that petitioner is entitled to relief under Newbold and that petitioner no longer qualifies for the armed career criminal enhancement, petitioner's remaining claims challenging his armed career criminal enhancement are DENIED as MOOT. Because petitioner no longer qualifies as an armed career criminal, respondent requests that petitioner receive a prompt re-sentencing.

The court now is in the difficult position of being required to vacate a sentence imposed by another judge in this district. Other courts under similar circumstances have found that the interests of justice weigh in favor of transferring actions in this procedural posture to the sentencing court. See Outlaw v. Craig, No. 5:08-cv-00889, 2010 WL 454925, at *4 (S.D.W. Va. Feb. 2, 2010); Hayden v. Rivera, No. 1:08-cv-813, 2009 WL 3247448, at * 2 (M.D.N.C. Oct. 6, 2009) (finding re-

sentencing appropriate on Watson claim transferred from the United States District Court for the District of South Carolina to the sentencing court); Conley v. Crabtree, 14 F.Supp. 2d 1203, 1207-1208 (D. Or. 1998) (finding that if an action is within the class of cases in which a petitioner challenges his conviction and sentence through a § 2241 petition, then the case should be transferred to the district in which the petitioner was convicted and sentenced). Based upon the foregoing, the court finds that it is in the interest of justice to transfer this action to petitioner's criminal action in United States v. Hope, No. 5:06-CR-00167-F (E.D.N.C. May 14, 2007).

CONCLUSION

For the foregoing reasons, petitioner may proceed with his Newbold claim, but his remaining two challenges to his armed career criminal enhancement are DENIED as MOOT. The clerk of court is DIRECTED to transfer this action to petitioner's criminal action, United States v. Hope, No. 5:06-CR-00167-F (E.D.N.C. May 14, 2007).

SO ORDERED, this 28th day of December, 2015.



LOUISE W. FLANAGAN
United States District Judge